

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
July 5, 2005 Agenda
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING

City's Negotiators: Art Hartinger, Carmen Valdez, Ed Kreisberg

Anticipated issues under negotiation: Wages, Hours, Benefits, Working Conditions

Pursuant to Government Code Section 54957.7, Organization(s) representing: Milpitas Police Officers Association, International Association of Firefighters, PROTECH, Milpitas Supervisors Association, Milpitas Employees Association

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Subdivision (a) of Government Code Section 54956.9

City of Milpitas vs. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV814946 consolidated with Case No. 103CV008400

CONFERENCE WITH LEGAL COUNSEL

Initiation of litigation pursuant to subdivision (c) Government Code Section 54956.9 (1 case), City as Plaintiff

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES (June 21, 2005)

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Presentation of Books Donated: Gift to Milpitas Library from former President of the Philippines Fidel Ramos which he presented during his visit and tour of Milpitas City Hall on June 22

Proclamation

- July – Parks and Recreation Month

Certificate of Appointment

- William Nolan, Citizens Emergency Preparedness Advisory Commission, Alternate No. 2

Commendations:

- Diane McDonough, in recognition of contributions to the community; as a former member of the Economic Development Commission

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with Asterisks)

XIII. PUBLIC HEARINGS

- 1. Approve Entertainment Event Permit and Waive Fees: Art & Wine Summer Festival: August 20-21, 2005: Milpitas Chamber Of Commerce (Staff Contact: Mary Lavelle, 586-3001)**
- 2. Introduce Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning And Annexation) And Amending Chapter V-500 (Neighborhood Beautification) Of The Municipal Code To Enhance The Code Enforcement Program (P-ZT2004-2). (Staff Contact: Tambri Heyden, 586-3280)**

XIV. UNFINISHED BUSINESS

- 3. Receive Status Report On Farmers' Market Location Search (Staff Contact: Cindy Maxwell, 586-3282)**
- * 4. Receive Odor Control Comprehensive Action Plan Update Report. (Staff Contact: Darryl Wong, 586-3345)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (June 21, 2005)

RA4. Approval of Agenda

RA5. Update And Status Report On Milpitas Senior Housing Project (Staff Contact: Felix Reliford, 586-3071)

RA6. Receive Progress Report on Library, Midtown East and West parking garages (Project Nos. 8162, 8161, & 8170) (Staff Contact: Mark Rogge, 586-3403)

***RA7. Approve Purchase Order for Meyers Nave in the Amount Of \$150,000 for Public Works Litigation Expenses for Fiscal Year 2004-2005 and Approve Appropriation of the \$150,000 from the Redevelopment Agency Undesignated Reserve to the City Attorney's Department**

- *RA8. Adopt Resolutions Approving The Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

RA9. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- * 5. Review Terrace Gardens, Inc. Annual Financial Report: Councilmember Giordano (Staff Contact: Cindy Maxwell, 586-3282)**

Economic Development Commission

- 6. Review and Approve Draft Economic Strategic Plan: Economic Development Commission (Staff Contact: Cindy Maxwell, 586-3282)**

XVII. NEW BUSINESS

- * 7. Approve The First Amendment To The Senior Nutrition Contract With Compass Group USA, Inc. (Bateman Division) And The City of Milpitas And Authorize Payment (Staff Contact: Kathleen Yurchak, 586-3209)**
- * 8. Reappoint Representative To Bay Area Water Supply And Conservation Agency (Staff Contact: Darryl Wong, 586-3345)**

XVIII. ORDINANCES

- 9. Waive reading beyond the title and introduce Ordinance No. 271, an Ordinance of the City Council of the City of Milpitas to add Chapter 20 to Title V of the Milpitas Municipal Code requiring the City of Milpitas create a Public Art Policy, Establish a Public Art Committee and dedicate Capital Improvement Project Funds to the Acquisition and Installation of Public Artwork to Further the Public Art Policy (“The Milpitas Public Art Master Plan and Funding Ordinance”) (Staff Contact: Richard Pio Roda, 586-3040)**
- 10. Waive Reading Beyond The Title And Introduce Ordinance No. 262.2 “An Ordinance Of The City Council Of The City Of Milpitas Amending Section I-310-4.10 Of The Milpitas Municipal Code” regarding the Open Government Commission (Staff Contact: Steve Mattas, 586-3040)**
- 11. Consideration Of Urgency Ordinance Establishing A 45-Day Moratorium On The Establishment And Operation Of Medical Marijuana Dispensaries To Become Effective Immediately (Staff Contact: Steve Mattas, 586-3040)**
- * 12. Adopt Ordinance No. 139.3 Granting A Franchise To Comcast Of California/Colorado/ Florida/Oregon, Inc., To Construct, Operate, And Maintain A Cable System In The City Of Milpitas, California Setting Forth Conditions Accompanying The Grant Of The Franchise; Providing For Regulation And Use Of The System And The Public Rights-Of-Way, And Prescribing Penalties For The Violation Of The Provisions Herein (Staff Contact: Bill Marion, 586-2701)**

XIX. RESOLUTIONS

- * 13. **Adopt Resolution Setting August 4, 2005, As Milpitas National Night Out 2005 (Staff Contact: Tambri Heyden, 586-3280)**
- * 14. **Adopt Resolution Granting Initial Acceptance: Water System Air Relief Valve Modifications, Project No. 7086 - Phase 1 (Staff Contact: Doug DeVries, 586-3313)**
- * 15. **Adopt a Resolution Approving an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149 (Staff Contact: Greg Armendariz, 586-3317)**

XX. BIDS AND CONTRACTS

- 16. **Authorize the City Manager to Negotiate a Contract with Dyett and Bhatia, Urban and Regional Planners, to Conduct Phase II of the Transit Area Plan for the ±400-acre Area Around the Light Rail and Future Montague / Capitol BART Stations (Staff Contact: Tambri Heyden, 586-3280)**
- * 17. **Award Bid For Janitorial Services (Staff Contact: Chris Schroeder, 586-3161)**
- * 18. **Authorize The City Manager To Execute An Agreement Amendment: Montague Widening Project, Consultant HMH Engineers, Project No. 4179 (Staff Contact: Greg Armendariz, 586-3317)**
- * 19. **Authorize the City Manager to execute Debris Box Agreement With Valley Recycling (Staff Contact: Darryl Wong, 586-3345)**
- * 20. **Authorize the City Manager to Execute Agreement: SCS Engineers, North Main Street Development EIR Mitigation Project No. 8172 (Staff Contact: Mark Rogge, 586-3403)**
- * 21. **Approve Renewal Of Annual Software Support And Maintenance Fees With Various Vendors Through June 30, 2006 (Staff Contact: Terry Medina, 586-2703)**
- * 22. **Approve Contract Amendment With Meyers Nave And Authorize Use Of \$68,000 Of Existing Meyers Nave Purchase Order No. 3482, Line 2 For General Legal And Personnel Services (Staff Contact: Steve Mattas, 586-3040)**
- * 23. **Approve Plans and Specifications And Authorize The Advertisement For Bid Proposals: Sewer Deficiency Program, Project No. 6073, Raines, Melton & Carella, Inc. (Staff Contact: Doug De Vries, 586-3313)**
- * 24. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Hetch Hetchy Right of Way Landscape Improvements, Project No. 5053 (Staff Contact: Greg Armendariz, 586-3317)**
- * 25. **Approve Plans and Specifications and Authorize the Advertisement for Bids: Storm Water Pump Station Improvements, Project No. 8106 (Staff Contact: Doug De Vries, 586-3313)**
- * 26. **Authorize City Manager To Execute Cost Sharing Agreement With Santa Clara County; Montague Expressway Between Great Mall Parkway And I-680, Project No. 4179 (Staff Contact: Greg Armendariz 586-3317)**
- * 27. **Authorize the City Manager to Execute Agreement: Winzler & Kelly Consulting Engineers, Main Sewer Pump Station Improvements Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)**

- * 28. **Authorize City Manager to Execute Agreement; Advanced Engineering Design; Calaveras Blvd O/C Sidewalk; Project No. 4202. (Staff Contact: Greg Armendariz, 586-3317)**
- * 29. **Award Contract: Summers & Sons Electric Inc. For Electrical Work At Main Sewage Pump Station, Project Nos. 6079 & 8154 (Staff Contact: Greg Armendariz, 586-3317)**
- * 30. **Award Construction Contract to Western Roofing Service and Approve Budget Appropriation: Interim Senior Center Re-Roofing, Project No. 8135 (Staff Contact: Mark Rogge 586-3403)**
- * 31. **Reject Bid Protest and Award Construction Contract: 2005 Annual Slurry Seal, Project No. 4223, and 2006 Annual Street Resurfacing, Project No. 4229, American Asphalt Repair and Resurfacing Co., Inc. (Staff Contact: Doug De Vries, 586-3313)**

XXI. CLAIMS AND DEMANDS

- *32. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

XXII. ADJOURNMENT

THE COUNCIL MEETING SCHEDULED FOR TUESDAY, JULY 19, 2005 IS CANCELLED

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 2, 2005, AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Boulevard, Milpitas, CA 95035

E-mail: rpioroda@ci.milpitas.ca.gov

Fax: 408-586-3030

Phone: 408-586-3000

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings on the following Commissions:

Economic Development Commission

Open Government Commission

Sister Cities Commission

Applications are available online at www.ci.milpitas.ca.gov or in the Agenda rack outside the Council Chambers. Contact the City Clerk's Office (586-3002) for information.

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
July 5 , 2005
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIII. PUBLIC HEARINGS

- 1. Approve Entertainment Event Permit and Waive Fees: Art & Wine Summer Festival: August 20-21, 2005: Milpitas Chamber Of Commerce (Staff Contact: Mary Lavelle, 586-3001)**

Background: The Milpitas Chamber of Commerce has submitted an application for an Entertainment Event Permit to hold an Art & Wine Summer Festival along South Milpitas Boulevard between Los Coches and Turquoise Streets and continuing west on Los Coches on Saturday, August 20, and Sunday, August 21, 2005, from 10:00 a.m. to 6:00 p.m. each day. The application has been reviewed and approved by the various City departments and the public hearing advertised as required by the City Ordinance.

The Chamber has also submitted a letter requesting waiver of the application fees for the Entertainment Event Permit and the business license requirements for the Festival. The Chamber, as a non-profit agency, is exempt from the \$100 Entertainment Permit application fee and the Council may waive the \$15 application processing fee. The Council has the authority to exempt the vendors from the requirements for the business licenses. The Council has waived the fees and approved the Entertainment Event Permit in previous years. The letter also requested permission to advertise the Festival on the City Hall Reader Board sign, as well as hanging banners to advertise the event.

Also the Chamber requests a waiver of fees for the mobile stage (available from Recreation).

Recommendation:

1. Open the Public Hearing and hear any testimony from the public.
 2. Close the public hearing.
 3. Waive business license fee requirements and other fees, and approve the Entertainment Event Permit for Art & Wine Summer Festival to be held on August 20 and 21, 2005, as requested by the Milpitas Chamber of Commerce, subject to the conditions noted and receipt of a certificate of insurance.
-
- 2. Introduce Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning And Annexation) And Amending Chapter V-500 (Neighborhood Beautification) Of The Municipal Code To Enhance The Code Enforcement Program (P-ZT2004-2) (Staff Contact: Tambri Heyden, 586-3280)**

Background: City Council Actions:

At the **May 18, 2004** meeting, the Council approved a proposal to expand the City's code enforcement program by proceeding with amendments to the Neighborhood Beautification, Sign and Zoning Ordinances. The amendments were intended to reduce notification timeframes, add administrative citations to the sign code, enable fines without notice for certain violations and require temporary sign registration.

On **December 21, 2004**, the City Council considered the first reading of the amendments to these ordinances and directed staff to return to the Council in 90 days after achieving greater consensus

for the amendments from the Sign Code Task Force. The Council also directed that, upon return of the amendments, the proposal to transition to proactive code enforcement not be included.

On **March 15, 2005**, the City Council again considered the first reading of this ordinance. The Council directed staff to re-advertise a public hearing for April 5, 2005 and reintroduce the ordinance incorporating sign code enforcement options such as:

1. Reduction of fines and/or
2. A sliding scale that penalizes more heavily those that take a longer period to comply by providing a greater amount of time to comply with a first violation notice or
3. Elimination of fines.

At the **April 5, April 19, and June 7, 2005** meetings, this agenda item was continued until a written FPPC (Fair Political Practices Commission) determination regarding potential voting conflict of interest could be received. Now that the determination has been received, this item has been readvertised for a July 5, 2005, public hearing.

Based on the March 15, 2005, Council direction, the following has been studied and is proposed regarding fines and penalties:

1. Reducing Fines and Sliding Scale:

The Council's agenda materials contain a background report and matrix and ordinance to incorporate fines reduced by 50%, as well as the sliding scale option. These changes, along with the proposed outreach program, would reduce financial impacts to the business community and provide more time for compliance before a fine is levied for non-compliance. The 50% fine reduction for a first violation, for example, would be \$50 as opposed to the \$100 currently assessed for zoning and NBO first violations. If both the reduced fine and sliding scale options are adopted, the staff time and cost incurred up to the point of issuing a citation notice (fine) is 3 hours (\$147).

2. Elimination of Fines:

Elimination of fines would result in Sign Ordinance implementation similar to that used currently. Courtesy letters would be sent to those violating the ordinance. Most violators would comply and make their signs conform to the ordinance. Some violators would not comply, resulting in long-term enforcement requiring many hours of staff time and resulting in long-term impacts on their neighbors. Department data shows that over the past year the time to comply with sign code courtesy violations has doubled without the ability to enforce. If the Council chooses this option, Section 11.03 would need to be deleted and Section 9.04 would need to be renamed and modified as shown on the attachment in the Council's agenda materials called "No Fine Option".

Modification of NBO to Allow Appeal of a Decision of the City Manager:

The abatement procedure proposed for the Sign Code and the Zoning Ordinance is identical to that of the NBO with one exception. At the time the NBO was adopted, the City Council decided that the decision of the City Manager at an administrative hearing on abatement of a nuisance was final and could not be appealed to the City Council. However, the Sign Task Force recommended that the abatement procedure language be included with an additional provision allowing appeal of a decision of the City Manager for the Sign Code (30-9.06(g)), Zoning Ordinance (Section 26) and NBO. This NBO language is incorporated in Section 6 of the Ordinance on page 35. Adding this language to the NBO would be a departure from a decision by the City Council at the time the NBO was adopted. At that time the City Council felt that a decision of the City Manager should be final. The City Council may decide to keep the proposed language in Section 6 (page 35 of the ordinance) for the NBO or delete it to reflect the original position of the City Council.

Line of Sight Triangle:

In addition to reflecting enforcement options, the reintroduction of Ordinance 124.27 contains a new subsection (4)(g) under open house directional sign (3.09 (o)) and garage sale sign regulations (3.09 (i)) to clarify the line of sight hazard issue raised at the March 15th Council meeting. Based on real estate sign height information provided by the real estate industry, it is proposed that such signs over 3 feet in height cannot be placed on a public sidewalk or other public right-of-way area if within the 45 foot line of sight triangle.

Political Sign Section:

At the December 3, 2004 Sign Code Task Force meeting, when the Task Force's work was thought to be done, the Task Force discussed making changes to the political sign section of the sign code to limit the maximum aggregate area of political signs per candidate on a parcel. Since political signs were not being modified at this time, staff suggested that the Task Force include this recommendation in their recommendation of support of the proposed ordinance so that if the Council desired, the City Attorney could be directed to make the change at a later date.

Sign Code Task force.

The Sign Code Task Force was created by the City Council to provide input to City staff in the preparation of the revised Sign Code. The Task Force held several meetings as is comprised of representatives from the real estate industry, sign companies, shopping center owners, CAC, and citizens. Twenty-four individuals attended one or more meetings and only eight individuals attended 75% of the meetings. On January 21, 2005, the Task Force unanimously, with one abstention, voted in support of the ordinance with the following changes that have been made and were reviewed by the Task Force at their February 4, 2005, final meeting.

- 1) Separate definitions for sign ordinance, zoning ordinance and NBO be provided for "Individual Violation" to reflect examples of individual violations specific to those ordinances;
- 2) Enforcement remedies for signs based on the type of violation, location and violation (see the matrix contained in the City Council Background Report);
- 3) Limiting the number of fines for all signs in the right-of-way in violation of the same code provision by eliminating administrative citations in this case and instead confiscating the sign and charging \$10 to recover the sign; and
- 4) Elimination of the three-foot setback from the street curb for open house directional and garage sale signs subject to certain exceptions.

The Task Force also recommended that within the 6-month period between ordinance adoption and implementation of Sign Code enforcement:

- 1) Courtesy notices would be issued by staff instead of levying fines;
- 2) An educational outreach program involving a partnership with the real estate industry, shopping center owners, and various Chambers of Commerce to explain to businesses the new amendments to the Sign Code, the enforcement procedure and the consequences of a violation of the ordinance; and
- 3) Quarterly task force meetings be continued for one year after ordinance adoption to monitor compliance by violators and implementation of the ordinance to assess whether any fine tuning is needed in the future; and
- 4) Staff training on the code changes.

Environmental Review:

The project is exempt from the provisions of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the ordinance text amendments may have a significant effect on the environment. The proposed text amendments will reorganize and clarify the Sign Ordinance, address violations in the Sign Ordinance and NBO and provide for Administrative Citation authority in the Zoning Ordinance. These changes will not have a significant effect on the environment.

Recommendation:

1. Close the public hearing.
2. Waive reading beyond title.
3. Introduce Ordinance No. No. 124.27.
4. Authorize proposed outreach program and continuation of quarterly task force meeting for one year after adoption of the ordinance.
5. Authorize proceeding with modifying the political sign section of the sign code to add a provision limiting the maximum aggregate area of political signs per candidate on a parcel.

XIV. UNFINISHED BUSINESS

3. Receive Status Report On Farmers' Market Location Search (Staff Contact: Cindy Maxwell, 586-3282)

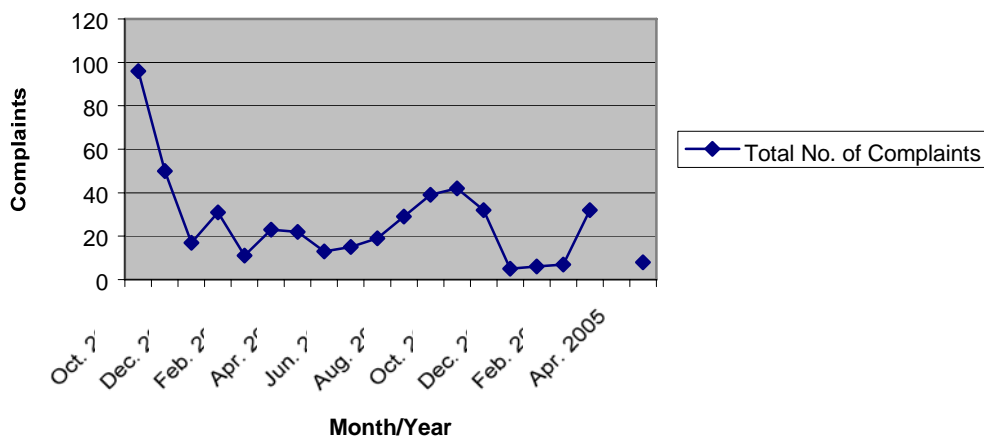
Background: On June 21, staff reported on the status of the search for a new location for the Milpitas Farmers' Market. The Council asked staff to provide an update at the next Council meeting. A verbal report will be presented.

Recommendation: Consider status report and provide direction to staff as appropriate.

* 4. Receive Odor Control Comprehensive Action Plan Update Report (Staff Contact: Darryl Wong, 586-3345)

Background: Odor complaint information from the Bay Area Air Quality Management District (BAAQMD) has not been consistent and timely since April, due to problems with the Rapid Notification e-mail system. BAAQMD staff has recently informed us that the notification system has been back on line as of the week of June 6. Complaint levels appear comparable with the number of complaints the same time last year. Staff will be distributing odor outreach information as a combined odor and street sweeping door hanger to residents in July. The Bay Area Air Quality Management District has reported the following number of complaints.

October 2003 - May 2005 Odor Complaint Summary



RA2. Roll Call

RA3. Approval of Minutes (June 21, 2005)

RA4. Approval of Agenda

RA5. Update And Status Report On Milpitas Senior Housing Project (Staff Contact: Felix Reliford, 586-3071)

Background: On May 18, 2004, the City Council/Redevelopment Agency authorized a period of exclusive negotiation with Mid-Peninsula Housing Coalition for the purpose of developing a minimum 98-unit senior affordable housing project at 163 North Main Street; the DeVries/Smith House site. The purpose of this report is to provide the Council/Agency with a report regarding the proposed project design and negotiations to date.

Included in the Council/Agency agenda packet is a memorandum which addresses the current status of the project including: 1) Site Development Plan, 2) Extension of the Exclusive Negotiation Agreement, 3) Update on the Projected Costs of the Senior Housing Project, and 4) Proposed Naming of the Senior Housing Complex. Also included is the project schedule, site plan and the proposed names of the Senior Housing project submitted by Mid-Peninsula.

With regards to the proposed naming of the senior housing complex, no name has been proposed for the new Senior Housing Project. Mid-Peninsula Housing has developed a list of four (4) names for the Council's consideration. Staff recommends that the proposed names be submitted to the Facilities Naming Committee to develop a recommendation to the City Council. The Committee may also wish to identify other names in their recommendation to the Council.

Recommendation:

1. Direct staff to forward the list of names for the proposed Senior Housing Project to the Facilities Naming Committee for a recommendation to the City Council.
2. Note receipt and file the Senior Housing Update and Status Report.

RA6. Receive Progress Report on Library, Midtown East and West parking garages (Project Nos. 8162, 8161, & 8170) (Staff Contact: Mark Rogge, 586-3403)

Background: The architect for the library continues with the Design Development phase. The architect for both the Midtown East and West parking garages has started the Conceptual Design phase. Both projects are included in the Capital Improvement Program, and staff will provide a brief presentation on the design progress of these projects.

Recommendation: Note receive and file the progress report on the design of the library and the Midtown East and West parking garages.

***RA7. Approve Purchase Order for Meyers Nave in the Amount Of \$150,000 for Public Works Litigation Expenses for Fiscal Year 2004-2005 and Approve Appropriation of the \$150,000 from the Redevelopment Agency Undesignated Reserve to the City Attorney's Department Supplies and Services Budget for Fiscal Year 2004-2005 (Staff Contact: Steve Mattas, 586-3040)**

Background: The expenses associated with the City Hall litigation matter for fiscal year 2004-2005 are expected to total \$150,000 greater than the amount previously authorized for this fiscal year. The additional costs are related to the extensive discovery that has been completed to date and other related costs. The City Attorney Subcommittee has reviewed this request.

Recommendation: It is recommended that the City Council/Redevelopment Agency approve a purchase order for Meyers Nave in the amount of \$150,000 for public works litigation expenses for fiscal year 2004-2005 and approve appropriation of the \$150,000 from the Redevelopment Agency undesignated reserve to the City Attorney's Department Supplies and Services Budget for fiscal year 2004-2005.

***RA8. Adopt Resolutions Approving The Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

Background: The investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for your review and approval. Finance staff continues to monitor changes to the Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy.

Staff is proposing two changes to the Annual Investment Policy. The first proposed change is to modify the first bullet point under Investment Parameters Subsection Diversification (page 3) to indicate that there are no limitations in the investment of U.S. Treasury and Federal Agency securities. This statement is consistent with other parts of the investment policy as found in the Authorized Investments Section (page 6) and Maximum Investment Maturity and Percentage Table (page 8).

The second proposed change is to modify the investment portfolio benchmark (page 4). Currently, the City's investment portfolio performance is measured against the average yield of previous year and current year two-year U.S. Treasury note for the quarter just added. Staff believes that a better benchmark would be the 12 month average yield of the two-year U.S. Treasury note. The proposed benchmark is more realistic because it reflects frequent changes of interest rate in the investment market.

The Policy is in compliance with all the provisions of the California Government Code, Sections 53600 through 53659, the authority governing investments for municipal governments. A marked-up copy of the Annual Investment Policy is included in the agenda packet for Council's approval.

Recommendation: Staff recommends that the City Council/Milpitas Redevelopment Agency adopt the attached resolutions approving the Annual Investment Policy.

RA9. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

*** 5. Review Terrace Gardens, Inc. Annual Financial Report: Councilmember Giordano (Staff Contact: Cindy Maxwell, 586-3282)**

Background: Councilmember Giordano has referred the Annual Financial Report for Terrace Gardens, Inc., to the City Council for review. The report covers calendar years 2003 and 2004. The independent auditor's report concludes that the financial statements fairly present the financial position of Terrace Gardens, Inc. and is in conformity with generally accepted accounting principles. A copy of the report is included as an attachment to the Council agenda.

Recommendation: Note receipt and file.

Economic Development Commission

6. Review and Approve Draft Economic Strategic Plan: Economic Development Commission (Staff Contact: Cindy Maxwell, 586-3282)

Background: During the previous fiscal year, the City Council approved the concept and funding for the preparation of an Economic Development Plan. The Economic Development Commission (EDC) oversaw and guided the development of the draft Plan during the past year. The City's consultant is Applied Development Economics (ADE) of Berkeley. The EDC gave ADE guidance on the report, in part, through the work and recommendations of various subcommittees. Professional research for the Plan included a business survey, focus groups, a public forum, an employee survey of a large corporation, and interviews with key community stakeholders and top corporate executives.

MAJOR REPORT FINDINGS

Public Input

- Most local-serving businesses report negative growth over the past two years but plan to stay or expand.
- Executives indicate that Milpitas' past advantage as a location for inexpensive office space has disappeared. The City continues to offer excellent access to regional transportation facilities.

Retail Market Analysis

- Milpitas residents represent a retail market of \$394 million annually. Milpitas businesses capture sales of \$864 million per year. The excess sales are due to non-resident workers and from communities from south of Milpitas.
- Milpitas should add more upscale shopping opportunities and take advantage of the international flavor of its existing commercial centers. Milpitas loses sales to residents in products such as automobiles, groceries, furniture and other general merchandise categories. There are no upscale grocery stores or restaurants.
- The Great Mall can help Milpitas improve its retail mix. Its total sales per square foot are less than other malls.
- There will be significant new retail competition in neighboring communities.

Economic Base and Industry Cluster Analysis

- 46% of Milpitas' employment is in computer and communications hardware, semiconductors, electronic components, software, and biomedical. The expansion abilities of these industrial sectors may be limited by lack of trained R&D and product development workers and affordable housing in the Bay Area.
- Expansion opportunities are available in support services such as finance, design, marketing, and professional and technical services. Nanotechnology may be another opportunity.
- There will be a growing demand for Class A office space.

Comparisons to Eight Other Cities

- Milpitas strengths are its large jobs base, its relatively low housing costs relative to wages and its ethnic diversity. It is average in educational achievement and retail sales and has a relatively higher unemployment rate.

GOALS AND OBJECTIVES

1. Improve Milpitas' image as a place to live, work and shop.
 - 1A. Build and maintain an effective place branding strategy.
2. Improve retail-spending opportunities.
 - 2A. Diversify the mix of retailers within the Midtown area.
 - 2B. Expand existing regional shopping opportunities in the area that includes the Great Mall.
 - 2C. Increase demand for upscale retail.
3. Balance housing supply with demand for housing by local workers.
 - 3A. Improve the balance of housing opportunities by increasing the percentage of Milpitas workers who live in Milpitas.

4. Retain and support the success of existing and new businesses.
 - 4A. Retain and expand existing Milpitas-based companies.
5. Improve employability of local residents.
 - 5A. Consider the establishment of a career center that would help match local workers with local jobs.
 - 5B. Consider the establishment of specialized training centers that support local jobs.
 - 5C. Increase entrepreneurial participation among City residents.
6. Diversify Milpitas' economic base.
 - 6A. Attract new businesses to Milpitas.
 - 6B. Increase the supply of Class A professional office space.

Implementation would include development of a branding strategy and ongoing marketing activities, conducting a research survey to identify residents' shopping preferences, promoting shopping opportunities to residents and nonresident workers, development of various business incentive programs, cooperative efforts to provide resources for career opportunities and job training, and continued implementation of the Midtown Specific Plan and Housing Element and development of the Transit Area Plan. A draft implementation outline that includes costs will be reviewed by the City Council at a later date.

The draft Economic Strategic Plan was reviewed by the EDC on May 9, 2005. They recommended approval of the Plan, with amendments, to the City Council. The revisions by the EDC were incorporated into the May 9 draft.

Recommendation: Approve the May 9, 2005 draft of the Economic Strategic Plan.

XVII. NEW BUSINESS

- * 7. **Approve The First Amendment To The Senior Nutrition Contract With Compass Group USA, Inc. (Bateman Division) And The City of Milpitas And Authorize Payment (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. Compass Group USA, Inc. known as Bateman has been catering the Senior Nutrition Program since July 1, 1998. The program serves seniors, sixty years and older, and Bateman meals will be served 150 days per year, an average of 75 meals per day, for a total of 11,250 meals per year.

Enclosed in the Council's packet is the First Amendment to the Contract, between Bateman and the City of Milpitas, which details the specifications of the contract terms for July 1, 2005 through June 30, 2006, for the Senior Nutrition Program food costs totaling \$41,400. Bateman agrees to provide meals at \$3.68 each, which will not exceed the approved budgeted amount of \$41,400, for FY 2005-2006. The contract is subject to approval as to form by the City Attorney.

Recommendation: Approve the first amendment to the contract and authorize payment to Bateman, Compass Group USA, Inc. for July 1, 2005 through June 30, 2006, not to exceed \$3.68 per meal for a total of \$41,400 for the fiscal year. Sufficient funds have been approved in Recreation Services' FY 2005-2006 operating budget.

- * 8. **Reappoint Representative To Bay Area Water Supply And Conservation Agency (Staff Contact: Darryl Wong, 586-3345)**

Background: This request is to reappoint Councilmember Livengood as the representative to the Bay Area Water Supply and Conservation Agency. The Agency, authorized under AB 2058, plans and acquires supplemental water supplies, encourages conservation and regional recycled water use and plans/finances new facilities for collection and transmission of water.

Recommendation: Reappoint Councilmember Livengood to the Bay Area Water Supply and Conservation Agency.

XVIII. ORDINANCES

9. **Waive reading beyond the title and introduce Ordinance No. 271, an Ordinance of the City Council of the City of Milpitas to add Chapter 20 to Title V of the Milpitas Municipal Code requiring the City of Milpitas create a Public Art Policy, Establish a Public Art Committee and dedicate Capital Improvement Project Funds to the Acquisition and Installation of Public Artwork to Further the Public Art Policy (“The Milpitas Public Art Master Plan and Funding Ordinance”)** (Staff Contact: R. Pio Roda, 586-3040)

Background: The proposed ordinance defines what would be considered public artwork to be located on, affixed or applied to City property. It also mandates that the City establish a Public Art Committee. The Committee’s primary task will be to review and recommend the selection and placement of Public Artwork. The Committee’s recommendations will be advisory to the City Council and Redevelopment Agency. The Public Art Committee will also review and provide advice and recommendations to the City and the Redevelopment Agency regarding the development of a Public Art Program Master Plan. The Public Art Program Master Plan will establish and guide the implementation of a Milpitas Public Art Policy. The Public Art Program Master Plan will (1) Survey opportunities throughout the City and the Redevelopment Agency District for suitable sites and areas for the placement of Public Art; (2) Provide advice as to the potential priority for Public Art installations; (3) Advise as to potential Public Artwork aesthetic themes; and (4) Advise as to the appropriate cataloguing and maintenance of Public Artwork. The Committee will recommend to the City Council for adoption program guidelines, policies and procedures to ensure the consistent administration of the Public Art Program.

The Ordinance also establishes a Public Art Fund. The City shall dedicate 1.5% of eligible project expenditures within the City’s annual Capital Improvement Project to the acquisition and installation of Public Art. To establish a significant initial fund, the City shall provide an additional \$125,000 per year to the Public Art Fund for the first four years of the Public Art Master Plan, effective Fiscal Year 05/06. Three years from the effective date of the ordinance, the Council will review a minimum project eligibility threshold of \$1 million per CIP project for the application of the 1.5% formula.

Recommendation: Motion to waive reading beyond the title for Ordinance No. 271. Motion to introduce Ordinance No. 271, an ordinance of the City Council of the City of Milpitas to add Chapter 20 to Title V of the Milpitas Municipal Code requiring the City of Milpitas create a Public Art Policy, establish a Public Art Committee and dedicate Capital Improvement Project funds to the acquisition and installation of public artwork to further the Public Art Policy (“The Milpitas Public Art Master Plan and Funding Ordinance.”).

10. **Waive Reading Beyond The Title And Introduce Ordinance No.262.2, “An Ordinance Of The City Council Of The City Of Milpitas Amending Section I-310-4.10 Of The Milpitas Municipal Code” regarding the Open Government Commission**

Background: The proposed ordinance presented by Vice-Mayor Gomez would establish the formation of a City Council subcommittee that would temporarily assume all of the powers and duties of the Open Government Commission. The City Council subcommittee would exist for one year or until the appointment of commissioners to the Open Government Commission.

Recommendation

1. Motion to waive reading beyond the title for Ordinance No.262.2.

2. Motion to introduce for first reading Ordinance No. 262.2, an ordinance of the City Council of the City of Milpitas amending Section I-310-4.10 of the Milpitas Municipal Code.

11. Consideration Of Urgency Ordinance Establishing A 45-Day Moratorium On The Establishment And Operation Of Medical Marijuana Dispensaries To Become Effective Immediately (Staff Contact: Steve Mattas, 586-3040)

Background: At its meeting of May 17, 2005, the City Council considered adoption of an urgency ordinance establishing a temporary moratorium on the establishment and operation of medical marijuana dispensaries. Although the motion to adopt the ordinance did not receive the required 4/5ths vote for passage, the Council provided the City Attorney with direction to return with a version of the proposed moratorium as a regular ordinance. The attached interim ordinance, which will provide for a 45-day moratorium on such uses, and which may subsequently, following notice and public hearing, be extended for up to 22 months and fifteen days, will still require a vote of 4/5ths of the Council to become effective.

Recently, Planning staff has received several written and verbal inquiries regarding the land use application process for medical marijuana dispensaries. As the Council is aware, the operation and location of medical marijuana dispensaries is a complicated issue. State and federal law are not in agreement on whether such facilities are legal, the state's laws on the issue are not clear, and community sentiment regarding such facilities and the purpose of their existence is mixed. Furthermore, the existence and operation of dispensaries is a relatively new concept and the full scope of the potential impacts of dispensaries is not known, although other California communities in which dispensaries have opened have reported the occurrence of such negative secondary impacts as:

Increased crime in the vicinity of the dispensaries;
Robbery of patients as they go in or leave the dispensaries;
A burglary attempt on a dispensary;
Increased DUIs in the vicinity of the dispensaries;
Increased street dealing in the vicinity of the dispensaries;
Individuals smoking marijuana in the vicinity of the dispensaries; and
Reports of impacts on neighboring businesses due to the criminal element being drawn to dispensaries.

Based upon these reports, it is clear that allowing medical marijuana dispensaries within the City poses a risk to the public safety, health and welfare. Planning staff, working in cooperation with the Interim City Manager and the City Attorney's office, is working to draft an amendment to the zoning ordinance to permit such dispensaries as conditional uses in three zoning districts (HS, M1 & M2) and to provide similar regulations as adult businesses. As an interim measure, however, the Council may wish to consider the adoption of a temporary moratorium on these uses until such time as the City can adopt a comprehensive regulatory framework.

Pursuant to Government Code Section 65858, the City may establish a 45-day moratorium on the establishment prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. Moratoriums may be extended for up to 22 additional months provided that a current and immediate threat to the public safety, health and welfare still exists.

Recommendation: Consider the attached urgency ordinance and then:

1. Waive reading beyond the title; and
2. Adopt Ordinance No. 270 (pursuant to the provisions of Government Code 65858, the Ordinance shall be adopted and become effective immediately without a second reading if it receives a vote of at least four-fifths vote of the Council)

- * 12. **Adopt Ordinance No. 139.3 Granting A Franchise To Comcast Of California/Colorado/Florida/Oregon, Inc., To Construct, Operate, And Maintain A Cable System In The City Of Milpitas, California Setting Forth Conditions Accompanying The Grant Of The Franchise; Providing For Regulation And Use Of The System And The Public Rights-Of-Way, And Prescribing Penalties For The Violation Of The Provisions Herein (Staff Contact: Bill Marion, 586-2701)**

Background: On June 21, 2005, Ordinance No. 139.3 was first introduced to the City Council. This Ordinance provides for the renewal of the cable television franchise with Comcast of California/Colorado/Florida/Oregon, Inc. The prior franchise agreement expired in 2003, but was extended several times by the Council while negotiations were being held to update the previous agreement.

All of the items identified in the technical review of the cable system, the survey of subscribers, input from the public, and changes directed by Council have been addressed in the updated cable franchise agreement. The remaining item that needs to be resolved is the location of the Education/Public Access studio. Staff will continue to review various alternatives that could support the equipment needed for the studio and will return to Council with a recommendation for Council's consideration.

Recommendation:

1. Waive reading beyond the title and;
2. Adopt Ordinance No. 139.3 Granting a Franchise to Comcast of California/Colorado/Florida/Oregon, Inc., to Construct, Operate, and Maintain a Cable System in the City of Milpitas, California Setting Forth Conditions Accompanying the Grant of the Franchise; Providing for Regulation and Use of the System and the Public Rights-of-Way and Prescribing Penalties for the Violation of the Provisions Herein.

XVIII. RESOLUTIONS

- * 13. **Adopt Resolution Setting August 4, 2005, As Milpitas National Night Out 2005 (Staff Contact: Tambri Heyden, 586-3280)**

Background: National Night Out, sponsored by the National Association of Town Watch, is a unique crime and drug prevention event where citizens in participating neighborhoods gather for a "block party" and other activities in order to become better acquainted and make their neighborhoods safer. The Community Advisory Commission has recommended Thursday, August 4, 2005, as the date to celebrate National Night Out in Milpitas.

Recommendation: Adopt a resolution designating Thursday, August 4, 2005, as Milpitas National Night Out 2005.

- * 14. **Adopt Resolution Granting Initial Acceptance: Water System Air Relief Valve Modifications, Project No. 7086 - Phase 1 (Staff Contact: Doug DeVries, 586-3313)**

Background: The project involves retrofitting approximately forty (40) existing air relief valves from below ground level to above ground level to comply with State Code, Title 22, Chapter 16, as mandated by the California Department of Health Services (DOHS).

The City Council awarded the project to West Valley Construction on September 21, 2004. The project has been successfully completed. Therefore an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to 10% of the contract amount or \$15,461.50.

Recommendation: Adopt resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$15,461.50.

- * 15. **Adopt a Resolution Approving an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149 (Staff Contact: Greg Armendariz, 586-3317)**

Background: An Initial Study and Mitigated Negative Declaration (IS/MND) were prepared for future and current proposed Milpitas Sports Center and Cardoza Park Improvements, which includes the current Milpitas Sports Center Circulation Improvements, Project No. 8149, in accordance with the California Environmental Quality Act. The scope of potential improvements covered in the IS/MND include circulation and parking improvements within the Sports Center and School District properties and new driveway entries on Calaveras Boulevard with a new traffic signal at Carnegie Drive; a new Tennis Center with a pro shop/restroom structure; replacement of the existing football field and track with a new soccer/football field; a ball field plaza and materials storage area; and an indoor pool. Proposed upgrades at Cardoza Park include improvements to the existing amphitheater and playground, new courts for volleyball, basketball and bocce; and expanded on-site parking. Other improvements include landscaping, drainage upgrades, utility upgrades, and related work. These proposed site improvements will be constructed in different phases, pending available funds.

The IS/MND was circulated for public review from April 21, 2005 to May 10, 2005. Copies were delivered to the State Clearinghouse of the Governor's Office of Planning and Research for review by state agencies. The public review process was advertised and the project site was posted. In addition to the public review process, a community meeting was also advertised and flyers mailed to surrounding residents. The community meeting was held last May 10, 2005; several neighbors attended. Staff answered their questions about the project, and no objections were raised. Staff did not receive comments related to the draft IS/MND, CEQA, or other environmental issues. The Initial Study/Mitigated Negative Declaration has been finalized and staff recommends it for adoption.

Recommendation: Adopt a resolution approving an Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the proposed Milpitas Sports Center and Cardoza Park Improvements, Project No. 8149.

XX. BIDS AND CONTRACTS

16. **Authorize the City Manager to Negotiate a Contract with Dyett and Bhatia, Urban and Regional Planners, to Conduct Phase II of the Transit Area Plan for the ±400-acre Area Around the Light Rail and Future Montague / Capitol BART Stations (Staff Contact: Tambri Heyden, 586-3280)**

Background: On November 16, 2004, the City Council directed the City Manager to negotiate a contract with the Firm of Dyett & Bhatia to prepare Phase I of the Transit Area Plan for a ±400 acre area surrounding two VTA Light Rail Stations and the Future Montague / Capitol BART Station. Phase I entailed the conducting of a community visioning exercise and the preparation of preliminary conceptual land use plans. Dyett & Bhatia began work in December 2004. After a series of Stakeholder interviews and two design charrettes, three draft alternative concept plans were prepared and presented to the Planning Commission on March 23, 2005. The Planning Commission recommended that two alternative concept plans be forwarded to the City Council for approval which the Council adopted on April 5, 2005, along with giving staff direction to initiate Phase II of the Transit Area Plan with the two alternatives.

On May 18, 2005, staff sent invitations to the top four firms that had responded to the City's RFQ/RFP to interview for preparation of Phase II of the Transit Area Plan. Only Dyett & Bhatia

was interviewed as the other three firms declined to pursue the project. Dyett & Bhatia made an effective presentation and proposed a scope of work that can effectively accommodate the product and timing needs of the City.

Included in the Council's materials is a draft consultant contract with Dyett and Bhatia including a scope of work, schedule, and budget for this 14-month project.

The Scope of Work is as follows:

Task 1.0: Analysis of Environmental Impacts and Development Issues. This task would include a preliminary traffic analysis, an analysis of sewer treatment capacity, an analysis of market absorption and demand in order to minimize fiscal impacts to the City, existing conditions analysis of land use, transportation, utilities and hydrology, hazardous materials, soils and seismic hazards. Development issues would be researched and potential solutions would be provided for infrastructure and other items necessary for development to proceed, including the BART station design. An outreach program would be conducted with property owners and stakeholders about the Specific Plan process and the project setting section of the EIR would be prepared as part of this task.

Task 2.0: Preferred Concept Plan and Public Review. The Phase I Concept Plan would be based on the preliminary impact analysis, and further research about development issues and a Preferred Concept Plan would be prepared. This task would include a bus tour for stakeholders, the Planning Commission, City Council and staff to visit neighborhoods and districts in nearby cities that are comparable to those proposed for Milpitas. The revision of the Concept Plan would involve test site plans for the Boulevard Commercial and Mixed Use areas to refine the density recommendations, a fiscal impact analysis, an analysis of the pros and cons of potential revisions, as well as consultations with public agencies and staff. The Notice of Preparation for the EIR will be prepared and a stakeholders workshop will be held. The Revised Concept Plan would be presented to the Planning Commission and the City Council for feedback and direction.

Task 3.0: Draft Specific Plan and EIR Analysis. The consultant would prepare all the substantive components of the first four chapters of the Specific Plan, review them with City staff and compile an Administrative Draft Specific Plan. An EIR analysis would be conducted for Land Use, Circulation, and Community Design. Specific Plan proposals would be prepared and reviewed with City staff. A Stakeholders Workshop would be held and an Administrative Draft Specific Plan (first four chapters) would be prepared.

Task 4.0: Draft EIR. An Administrative Draft EIR would be compiled including all impacts and mitigations sections, as well as other required sections discussing alternatives and cumulative impacts. Meetings would be held with City staff to review and discuss proposed mitigations for major impacts including transportation, sewage treatment and flooding. Work would begin on the Draft EIR.

Task 5.0: Implementation Program and Completion of Draft Specific Plan and Draft EIR. An overall implementation strategy and phasing plan would be prepared under this task and a summary description of all infrastructure improvements required for development of the area. Cost estimates and financing mechanisms would be prepared for the area wide infrastructure resulting in recommendations for financing mechanisms for the provision of services and construction of infrastructure. The Specific Plan would be drafted and presented to the Planning Commission and the City Council for feedback and direction. The Draft EIR would be completed.

Task 6.0: Zoning and General Plan Amendment. The existing zoning code, Midtown Specific Plan and General Plan would be analyzed and recommendations would be made for any necessary revisions to those documents. Administrative Drafts and maps would be prepared for

amendments to the zoning code, the Midtown Specific Plan and the General Plan. A Stakeholder meeting would be held to present the main provisions of the draft documents to the stakeholders, invite comments, and answer questions.

Task 7.0: Public Review of Draft Specific Plan and Draft EIR. The public would be able to review these documents during a 45-day public review of the EIR. A public hearing would be held during this period to receive public comments on the Draft EIR and final comments on the Draft Specific Plan. A public hearing will be held before the Planning Commission on the Draft Specific Plan, Draft EIR, General Plan, and Zoning Ordinance changes.

Task 8.0: Final EIR and Adoption of Specific Plan, EIR, Zoning and General Plan Amendment. An Administrative Draft Final EIR would be prepared including responses to comments on the Draft EIR that would lead to publishing the final EIR. A final Specific Plan would be prepared in response to editorial comments from staff. The Final EIR and Final Specific Plan would be presented to the City Council.

The Scope of Work submitted by Dyett and Bhatia would fully utilize the \$325,000 budget authorized for this project by the City Council as part of the department's FY 05-06 budget approval, as well as the \$150,000 grant received from VTA. However, there are certain deliverables and agency coordination tasks that are extremely beneficial that were not included. These include:

- ❑ Five additional Technical Working Group meetings to meet on a regular basis with BART and City staff over the course of the project to resolve many critical issues, including the design of the BART station, BART line and related facilities, the Milpitas Boulevard extension, railroad lines, etc. Cost: \$5400.
- ❑ Analysis of Milpitas transportation impacts on San Jose transportation facilities. Cost: \$3000.
- ❑ Preparation of conceptual streetscape designs for all streetscape improvements. Freedman, Tung & Bottomly would prepare streetscape plans for all major streetscapes in the planning area. These plans would enable developers to have streetscape design standards to follow, thus enabling them to develop soon after plan adoption, rather than having to wait for the City to have plans prepared or do them on their own. Cost: \$92,273.
- ❑ Dyett & Bhatia coordination and oversight of Streetscape Design Program. Cost: \$9,227 (10%).
- ❑ Contingency. Given the many complex issues related to the development of the Milpitas Transit Area Plan, there is almost certainly going to be a need for additional services beyond those specified in the Scope of Work during the course of the project as more is learned about the issues involved. Additional funds could be required for additional data collection, additional analysis required for the EIR, additional work related to the future BART station, additional need to consider alternatives if directed by staff or the City Council, etc. These funds could only be used with the express authorization of City staff after a written request by Dyett & Bhatia, based on a specific proposal for additional services. Cost: 15% (\$87,735).

Additional Costs. The total additional cost of the additional tasks would be \$197,635. These additional tasks are strongly recommended to effectively to deliver an EIR that is less apt to be challenged and plan details that once completed will allow developers in the area to move forward with their proposals without delay and at a price more cost effective than if each developer had to hire their own consultants to do the work under this contract. The additional cost could be funded out of the Redevelopment Agency and potentially offset by developer contributions.

Recommendation: Authorize the City Manager to negotiate a contract with Dyett and Bhatia, Urban and Regional Planners, to conduct Phase II of the Transit Area Plan for the ±400 acre area around the light rail and future Montague / Capitol BART stations, in an amount not-to-exceed a)

\$672,635 or b) \$475,000 (the original budgeted amount), subject to approval as to form by the City Attorney.

If option (a) is chosen, approve the budget appropriation for \$197,635 from the Redevelopment Agency fund for additional costs detailed above.

*** 17. Award Bid For Janitorial Services (Staff Contact: Chris Schroeder, 586-3161)**

Background: Staff sent a Request for Proposal (RFP) to thirty-five vendors on Purchasing's vendor list for janitorial service for the City Hall Complex, the Sports Center, the Main Fire Station, and two Police Substations at the Mall. The bid was for a three (3) year term with two (2) one (1) year options based on performance.

The following is the recap of the bids received:

<u>Bidder</u>	<u>Janitorial Service</u>
California Facilities Maintenance	\$149,760.00
Clean Innovations	\$152,508.00
DeAnza Services	\$161,222.64
Hassan Complete	\$167,280.00
Empire Maintenance	<u>\$178,707.60</u>

In the past several years the City has contracted with three different janitorial services to perform this work. Each contractor has come back to the City with a request for additional funds, when after starting the job; they realized they had underestimated the hours in their bid. Therefore staff decided that they would evaluate the bid in accordance with Municipal Code Section I-2-5.13 "Request for Sealed Proposals" which allows the City to evaluate bids against a specific set of criteria and not solely on price. Staff based their recommendation on the bid that reflected the most realistic dollar estimate (based on the minimum hours listed in the RFP, current job performance as a the temporary holder of the contract, and the number and quality of personnel assigned). Empire Maintenance had the most responsive bid based on the above criteria. (There are sufficient funds in the Facilities Maintenance Operating budget for this service.)

Recommendation: Award the bid for Janitorial Service to Empire Maintenance in the amount of \$178,707.60 and authorize the City Manager to execute the contract, subject to approval as to form by the City Attorney.

*** 18. Authorize The City Manager To Execute An Agreement Amendment: Montague Widening Project, Consultant HMH Engineers, Project No. 4179 (Staff Contact: G. Armendariz, 586-3317)**

Background: On July 7, 1998, the City Council awarded a consultant contract to HMH Engineers for the design of Montague Expressway widening from Great Mall Parkway to Highway 680. Staff recommends that HMH Engineering perform additional services to complete and package an additional bid set of plans and specifications for Phase II of the widening project.

On August 3, 2004, the City council approved a Memorandum of Understanding between the City of Milpitas, Union Pacific Railroad, and Santa Clara County Department of Roads and Airports to repair the Railroad crossing at Montague Expressway. As part of that Memorandum UPRR agreed to allow the City to remove three rail crossings, one at Wrigley Way, and two on Yosemite Drive. Staff recommends that HMH Engineering perform additional services to prepare plans and specifications for the UPRR track removal and pavement restoration at these locations.

An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services not to exceed \$ 125,100, which is considered reasonable for the work described. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with HMH Engineers, in the amount of \$125,100, subject to approval as to form by the City Attorney.

- * 19. **Authorize the City Manager to execute Debris Box Agreement With Valley Recycling. (Staff Contact: Darryl Wong, 586-3345)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code, debris box haulers are required to apply for an agreement authorizing the hauler to engage in the business of collecting and disposing of non-organic solid waste and/or construction and demolition debris produced, kept or accumulated within the city limits of Milpitas. The haulers are required to pay the City a compensatory fee equal to 12% of the total gross receipts actually collected or received. Staff has reviewed the most recently submitted application and recommends approval of the agreement.

Recommendation: Authorize the City Manager to execute Debris Box Agreement with Valley Recycling, subject to approval as to form by the City Attorney.

- * 20. **Authorize the City Manager to Execute Agreement: SCS Engineers, North Main Street Development EIR Mitigation Project No. 8172. (Staff Contact: Mark Rogge, 586-3403)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). This project provides for the design of various environmental mitigations required by the Main Street Development EIR, including Historic American Buildings Survey (HABS) documentation for selected properties, on-site archeologist during demolition and excavation, Hazmat remediation design, and other mitigations as required by the EIR.

Staff issued a Request For Proposal (RFP) to select a qualified consultant for these environmental services in conformance with the City's consultant selection process. Staff sent the RFP to ten different environmental consultants for these services, however only one proposal was received. In general, the Consultants which did not submit proposals, are currently too busy and also stated they could not do the work within the City's schedule. Staff has reviewed the consultant's proposal and interviewed the firm of SCS Engineers, and recommends that they provide the services required for this project. Staff has negotiated a scope and fee for these services for an amount not to exceed \$345,000, which is considered reasonable for the work. Sufficient funds are available in the project budget.

Recommendation: Authorize the City Manager to execute a design services agreement with SCS Engineers for the North Main Street Development EIR Mitigation project.

- * 21. **Approve Renewal Of Annual Software Support And Maintenance Fees With Various Vendors Through June 30, 2006. (Staff Contact: Terry Medina, 586-2703)**

Background: The City of Milpitas manages numerous computer applications that were developed by various vendors to support the business needs of the City. These systems typically require an active software license and an annual support services fee. The terms of these services vary but for the most part correlate with the City's fiscal year. The following vendors software license and support services will be expiring on or around June 30, 2005 and require renewal in order to continue to use the computer application.

American Management Systems, Inc. for the City's Budget System

In fiscal year 1997/98, the City of Milpitas implemented a new Budget system that supports the budget tracking and reporting needs of the City. The system includes licensed software and maintenance support provided by American Management Systems, Inc. (AMS), the vendor of the budget application. Maintenance and support of the system are provided through the renewal of the annual fee \$6,250.53.

HDL Software, LLC for the City's Business License System

In fiscal year 2000/01, the City of Milpitas implemented a new Business License system that supports the issuance of City Business Licenses throughout the year. The system includes licensed software and maintenance support provided by HDL Software, LLC (HDL), the vendor of the business license application. Maintenance and support of the system are provided through the renewal of the annual fee of \$6,800.

Intergraph Corporation for the City's Geographic Information System (GIS)

In fiscal year 1998/99, the City of Milpitas embarked upon the implementation of a Geographic Information System (GIS) with approval for base map development services. The system includes licensed software and maintenance support provided by Intergraph Corporation, the vendor of the GIS application. Maintenance and support of the system are provided through the renewal of the annual fee of \$12,640.02.

KIS Computer Center for Cisco Equipment Support

In fiscal year 2002/03, the City of Milpitas implemented a new Internet firewall for protecting the City's computer information assets from computer viruses. The annual hardware warranty for the equipment that is used to support the system has expired and requires renewal. Maintenance and support of the system are provided through the renewal of the annual fee of \$2,509.78.

Recommendation: Authorize the City Manager to approve the payment of the annual software support and maintenance fees to American Management Systems Inc. for the City's Budget System in the amount of \$6,250.53, HDL Software, LLC for the City's Business License System in the amount of \$6,800.00, Intergraph Corporation for the City's GIS system in the amount of \$12640.02 and KIS Computer Center for Cisco Equipment Support in the amount of \$2,509.78. There are sufficient funds in the Information Services Operating budget for this request.

- * 22. **Approve Contract Amendment With Meyers Nave And Authorize Use Of \$68,000 Of Existing Meyers Nave Purchase Order No. 3482, Line 2 For General Legal And Personnel Services (Staff Contact: Steve Mattas, 586-3040)**

Background: Meyers Nave provides legal services to the City pursuant to a contract originally approved by the City Council in 1997. The hourly rates provided in the contract for general legal and personnel services and for litigation have not been increased since 2001. The hourly rates provided in the contract for land use cost recovery work have not increased since 2003. The proposed contract amendments, as recommended by the City Attorney Subcommittee, would provide as follows:

	Current	2005-2006 (Effective 7/01/05)	2006-2007 (Effective 07/01/06)
General Legal and Personnel Services	\$158 per hour (Last adjustment July 2001)	\$165 per hour	\$170 per hour
Cost Recovery on Land Use Applications	\$195 per hour (Last adjustment July 2003)	\$205 per hour	\$210 per hour

Litigation – Principal/Of Counsel	\$201.65 per hour (Last adjustment July 1, 2001)	\$210 per hour	\$218 per hour
Litigation - Associate	\$163.50 per hour (Last adjustment July 1, 2001)	\$170 per hour	\$177 per hour
Litigation - paralegal	\$92.65 per hour (Last adjustment July 1, 2001)	\$96 per hour	\$100 per hour

As indicated above the first increase would be effective as of July 1, 2005 with the second increase effective as of July 1, 2006.

The second request is to have the City Council approve use of \$68,000 from existing Purchase Order No. 3482, Line 2 for general personnel and legal services for fiscal year 2004-2005. The City Attorney Subcommittee has also reviewed and recommended this action. The basis for this request is that costs for general legal and personnel services have been above what the City Attorney projected at the beginning of fiscal year and the costs for employment arbitration, grievances and related matters has been below the amount originally estimated. The net effect of these changes does not increase the overall existing City Attorney Department budget for fiscal year 2004-2005.

Recommendation: It is recommended that the City Council, by motion, approve Amendment No. 5 to the existing contract between Meyers Nave and the City of Milpitas for legal services and authorize use of \$68,000 of existing Meyers Nave Purchase Order No. 3482, Line 2 for general legal and personnel services.

- * **23. Approve Plans and Specifications And Authorize The Advertisement For Bid Proposals: Sewer Deficiency Program, Project No. 6073, Raines, Melton & Carella, Inc. (Staff Contact: Doug De Vries, 586-3313)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project will replace sewer lines due to structural deficiencies, and differential settlement. Damage has been confirmed with the City's video inspection program. This phase of the project will result in sewer line replacements at 1665 Cortez Street to Cortez Street at Coelho Street, Dixon Road at Conway Street to the Hetch Hetchy right of way, 750 Terra Bella Drive north to Valencia Drive, Moonlight Circle, Norwich Avenue at Barker Street to Norwich Avenue at Casper Street, Norwich Avenue at Barker Street to 212 Barker Street, Saturn Court, and Carnegie Drive at Edsel Drive to Freeland Drive.

The Engineers' Estimate for the work is approximately \$620,000. Funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendation:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

- * 24. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Hetch Hetchy Right of Way Landscape Improvements, Project No. 5053 (Staff Contact: Greg Armendariz, 586-3317)**

Background: On June 17, 2003, City Council approved a consultant agreement with SSA Landscape Architects, Inc. (SSA) to provide professional design services for landscape renovation of the Hetch-Hetchy Right of Way, located between Washington Drive and Coelho Street. It was further amended on September 21, 2004, to address the updated requirements of the Hetch-Hetchy (SFPUC) permit. Plans and specifications for the subject project are now complete in accordance with the approved five-year Capital Improvement Program (CIP). The project provides a new pathway, landscape and irrigation, which will now utilize recycled water sources. The Engineers Estimate for the construction work is \$160,000. Additional funds may be requested at time of award of this project. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendation

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

- * 25. **Approve Plans and Specifications and Authorize the Advertisement for Bids: Storm Water Pump Station Improvements, Project No. 8106 (Staff Contact: Doug De Vries, 586-3313)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project will re-roof Penitencia and Bellew storm water pump stations. This project includes new; roofing, skylights, flashings, and minor repairs to the roof structure at the two stations. The Engineers estimate for this project is approximately \$50,000 and funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review at the Office of the City Engineer.

Recommendation:

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

- * 26. **Authorize City Manager To Execute Cost Sharing Agreement With Santa Clara County; Montague Expressway Between Great Mall Parkway And I-680, Project No. 4179 (Staff Contact: Greg Armendariz 586-3317)**

Background: On December 2, 2003, the City Council approved an agreement between the City of San Jose, City of Milpitas and Santa Clara County which provided for the City of Milpitas receiving 3Com development fees collected for regional improvements by the City of San Jose, to the City of Milpitas and the County of Santa Clara.

Within Milpitas, the 3Com development fees will be used to partially fund the widening of Montague Expressway between UPRR and I-680, including the installation of Intelligent Transportation System (ITS) improvements along Montague Expressway as part of the City's widening project. Due to the recent phasing of the construction of the Montague Widening project, the ITS improvements would not be constructed until funding and sufficient Right of way become available. The County of Santa Clara wishes to complete the ITS improvements as part of a County project scheduled for this year. Therefore, the 3Com fees for the ITS work needs to be given to the County.

Cost sharing agreement is proposed for this payment in the amount of \$354,000. There are sufficient funds in the project budget(s) to cover this transfer.

Recommendation: Authorize the City Manager to execute cost sharing agreement with the County of Santa Clara, in the amount of \$354,000, subject to approval as to form by the City Attorney.

- * 27 **Authorize the City Manager to Execute Agreement: Winzler & Kelly Consulting Engineers, Main Sewer Pump Station Improvements Project No. 6103 (Staff Contact: Greg Armendariz, 586-3317)**

Background: This project is included in the approved five-year Capital Improvement Program (CIP). This project will provide for the design and construction of a replacement main sewer pump station. The existing pump station was constructed over 40-years ago and has many deficiencies including susceptibility to damage from a significant seismic event.

Staff issued a Request For Proposal (RFP) for pump station engineering design services. The firm of Winzler & Kelly Consulting Engineers has been selected, in conformance with the City's consultant selection process to provide the engineering design services required for this project. Staff has negotiated a scope and fee not to exceed \$768,000, which is considered reasonable for the work.

Sufficient funds are available in the project budget.

Recommendation: Authorize the City Manager to execute the agreement with Winzler & Kelly Consulting Engineers, for an amount not to exceed \$768,000 for the engineering design of a new sewer pump station, subject to approval as to form by the City Attorney.

- * 28. **Authorize City Manager to Execute Agreement; Advanced Engineering Design; Calaveras Blvd O/C Sidewalk; Project No. 4202. (Staff Contact: Greg Armendariz, 586-3317)**

Background: This project is included in the approved Capital Improvement Program (CIP.) It provides for the widening of the existing sidewalk on the Calaveras Blvd. over crossing, between Milpitas Blvd. and Abel Street. The existing sidewalk also serves as a bike route and is currently very narrow for this purpose. The sidewalk widening would consist of add approximately two feet to the existing five foot sidewalk. The widening would be accomplished by narrowing the existing traffic lanes by two feet. Calaveras Blvd. is a State route and all work must be reviewed and approved by Caltrans. As the first order of work, Caltrans is requiring an engineering feasibility study for this proposal, prior to approval to proceed with design work. The engineering study will include both traffic and structural analysis, for the traffic lane modifications and the added weight to the bridge for the sidewalk widening.

Advanced Engineering Design (AED) has been selected through the City's consultant selection process, for preparation of the required studies and engineering design of this project. AED is qualified and experienced with the analysis and design of bridge improvements on various Caltrans structures. Staff has negotiated a fee of \$44,500, which is considered reasonable for the engineering studies and design work for this project. Sufficient funds are available in the project budget.

Recommendation:

Authorize the City Manager to execute an Agreement with Advanced Engineering Design for an amount of \$44,500, subject to approval as to form, by the City Attorney.

- * 29. **Award Contract: Summers & Sons Electric Inc. For Electrical Work At Main Sewage Pump Station, Project Nos. 6079 & 8154 (Staff Contact: Greg Armendariz, 586-3317)**

Background: A Request for Proposals was issued to provide electrical upgrades at the main sewage pump station site. The work includes installation of six new light fixtures and related electrical system elements. The new light fixtures will provide illumination within the pump station site and for the driveway entry area. The site currently has very little internal lighting and no entry lighting at the gate area. The work will also include relocation of spare street light poles and equipment from Winsor Avenue to a new storage location within the pump station site. The added lighting will improve safety for City staff that report to the site after hours to access equipment and materials. It will also provide improved illumination for both the driveway into the pump station and the new trail entry area for Coyote Creek Trail.

The additional lighting will also enhance security at the Main Sewage Pump Station.

Two vendors responded. The following is the recap of the bids received:

Bidder

Koffler Electrical	\$84,226.54
Summers & Sons Electric Inc.	\$36,590.30

The lowest responsive bid was received from Summers & Sons Electric Inc. for \$36,590.30. An additional allowance of \$2,909.70 is recommended to address potential unforeseen conditions. The total recommended contract award is \$39,500.

Sufficient funds are available in the project budgets to award this project.

Recommendation: Award the contract for electrical work at the Main Sewage Pump Station to Summers & Sons Electric Inc. in the amount of \$39,500.

- * 30. **Award Construction Contract to Western Roofing Service and Approve Budget Appropriation: Interim Senior Center Re-Roofing Project No. 8135 (Staff Contact: Mark Rogge 586-3403)**

Background: The Sal Cracolice facility has been in use as an Interim Senior Center since May 2002. The City recently completed improvements to the facilities kitchen, bathrooms, utility closet, classrooms, staff offices, and created a game room.

A roof inspection has been conducted and a depression in the roof surrounding the HVAC unit was found. Ponding in this area has been determined to be the cause of recent discovered roof leaks. The scope of work proposed to remedy the problem is to replace the roof and perform minor HVAC improvements to correct related code issues. The project was advertised and one bid proposal was submitted and opened on June 23rd, 2005. The proposal in the amount of \$78,175 was from Western Roofing Service.

The Engineers estimated construction cost for the work was \$65,000.00. The bid amount exceeds the Engineers estimate by \$13,175, or 20%. The discrepancy between the bids and the estimate is most likely due to requirements to maintain the HVAC system functional to accommodate the needs of the Interim Senior Center occupants during re-roofing. Therefore, it is recommended that the bid be awarded rather than rejecting all bids and re-advertising for new bids. The City will also receive CDBG funding in the amount of \$30,000 for this project.

Recommendation:

1. Award the contract to Western Roofing Service for the amount of \$78,175.
2. Approve Budget Appropriation in the amount of \$30,000 from the CDBG into CIP Project 8135.

- * 31. **Reject Bid Protest and Award Construction Contract: 2005 Annual Slurry Seal, Project No. 4223, and 2006 Annual Street Resurfacing, Project No. 4229, American Asphalt Repair and Resurfacing Co., Inc. (Staff Contact: Doug De Vries, 586-3313)**

Background: This is an annual project that is included in the approved Capital Improvement Program (CIP.) It provides a pavement slurry seal on Lassen Avenue, Olympic Drive, Platt Avenue, Platt Court, Pheland Court, Saratoga Drive and Mt. Shasta Avenue. On May 17, 2005, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals.

The project was advertised and sealed bid proposals were opened on June 10, 2005. The Engineer's Estimate for construction was \$128,000. The bid proposals ranged from \$96,169 to \$147,439, and the lowest responsive bidder is American Asphalt Repair and Resurfacing Co., Inc.

A bid protest was received from Granite Rock for an alleged sole source specification on the aggregate material. After analysis by staff and the City Attorney's office, the bid protest has been found to be without basis. More than one material supplier can provide the specified aggregate material. Staff recommends rejection of the bid protest, and the City Attorney concurs with this position.

Recommendation:

1. Reject bid protest from Granite Rock.
2. Award Construction Contract to American Asphalt Repair and Resurfacing Co., Inc. in the amount of \$96,169.

XXI. CLAIMS AND DEMANDS

***32. Approve Payment Requests: Miscellaneous Vendors / Contractors.
(Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$10,450.00 to Konica Minolta Business Machines for annual maintenance and support for three (3) shared high-speed 7065 copiers at City Hall.
(Funds are available from the Non-Departmental operating budget for this service.)
2. \$33,600.00 to the Bay Area Air Quality Management District (BAAQMD) for 40 diesel engine permits. New State regulations require permits for all diesel engines. The City operates diesel engines at various storm water pump stations, water pump stations, and for emergency power at selected facilities when PG&E power is temporarily lost. These permit fees were not known during budget preparation, therefore a budget appropriation from the following funds in the amounts indicated is required for this purchase: Water Fund: 400-416-4237, \$15,000, the Sewer Fund: 450-416-4237, \$12,000. The Facilities Maintenance, Fire Department, and Recreation Services Sports Center budgets have sufficient funding available for their permits that total \$6,600.

Recommendation: Approve the purchase requests and budget appropriations.

XXII. ADJOURNMENT

THE COUNCIL MEETING SCHEDULED FOR TUESDAY, JULY 19, 2005 IS CANCELLED

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 2, 2005, AT 7:00 P.M.**